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U.S. Citizenship
and Immigration
Services

H12



FILE:

Office: CALIFORNIA SERVICE CENTER

Date: JUL 12 2006

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a violation of a law relating to a controlled substance. The applicant is the spouse of a U.S. citizen and the parent of three U.S. citizen children. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his spouse and children.

The director concluded that the applicant failed to establish a qualifying family member would suffer extreme hardship and was statutorily ineligible for a waiver due to his criminal convictions. The director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated March 31, 2006.

The record reflects that all of the applicant's convictions are under the name "Michael Hall" in New York. On February 4, 1998, the applicant pled guilty to and was convicted of disorderly conduct. The applicant was sentenced to a fine. On April 2, 1998, the applicant was arrested for, and later pled guilty to and was convicted of, possession of marijuana. The applicant was sentenced to a fine. On October 5, 1998, the applicant pled guilty to and was convicted of a second and separate count of possession of marijuana. The applicant was sentenced to a fine. On November 23, 1998, the applicant pled guilty to and was convicted of a third and separate count of possession of marijuana. The applicant was sentenced to a fine. On December 15, 1998, the applicant was arrested for and later pled guilty to and was convicted of criminal sale of marijuana in the 5th degree. The applicant's sentence was suspended in favor of one year of probation.

On January 20, 2000, the applicant pled guilty to and was convicted of unlicensed operation of a motor vehicle. The applicant was sentenced to a fine. On February 8, 2000, the applicant pled guilty to and was convicted of criminal trespass in the 2nd degree and two counts of disorderly conduct. The applicant was sentenced to time served. On September 20, 2000, the applicant pled guilty to and was convicted of a fourth and separate count of possession of marijuana. The applicant was sentenced to a fine.

On appeal, counsel asserts that a detailed review of the documents submitted and the testimony given at the time of interview established extreme hardship to a qualifying family member and that, as such, grant of a waiver to the applicant is warranted. *See Form I-290B* dated May 1, 2006. In support of this assertion, counsel only submitted the above-referenced Form I-290B. Counsel indicated that he would file a brief and/or additional evidence within thirty days. On June 14, 2006, the AAO informed counsel that he had five days in which to submit additional documentation to support the appeal. At no time did counsel forward a brief and/or additional evidence to support the appeal. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A)(i) of the Act states in pertinent part:

- (1) Criminal and related grounds. —

(A) Conviction of certain crimes. –

(i) In general. – Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

The Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) or subsection (a)(2) *and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana* (emphasis added.)

A section 212(h) waiver is generally not available to section 212(a)(2)(A)(i)(II) cases involving controlled substance crimes. Indeed, the Act makes it very clear that the section 212(h) waiver applies only to controlled substance cases that involve *a single offense* of possession of 30 grams or less of marijuana. In this case, the applicant was convicted of four separate counts of unlawful possession of marijuana and one count of criminal sale of marijuana in the 5th degree. The AAO finds that the Act does not provide a waiver for the applicant's ground of inadmissibility. Therefore, the applicant is statutorily ineligible for a waiver.

Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant has established extreme hardship to his U.S. citizen wife and children or merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

ORDER: The appeal is dismissed.